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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23

24 COLLEGE OF THE LAW, SAN
FRANCISCO a public trust and
25 institution of higher education duly
organized under the laws and the
26 Constitution of the State of
California;
27 FALON VICTORIA, an individual;
RENE DENIS, an individual;

Case No. 4:20-cv-03033-JST

**PLAINTIFFS' MOTION TO
ENFORCE STIPULATED
INJUNCTION**

**ASSIGNED FOR ALL PURPOSES
TO THE HONORABLE JON S.
TIGAR. COURTROOM 6**

1 TENDERLOIN MERCHANTS AND
2 PROPERTY ASSOCIATION, a
business association;
3 RANDY HUGHES, an individual; and
KRISTEN VILLALOBOS, an individual,

4 Plaintiffs,

5 v.

6 CITY AND COUNTY OF SAN
FRANCISCO, a municipal entity,

7 Defendant.

Date: 04/18/2024
Time: 2:00 p.m.

Action Filed: 05/04/2020
Trial Date: (TBD)

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1 Plaintiffs, College of the Law, San Francisco, Fallon Victoria, Rene Denis,
 2 Randy Hughes, and Kristen Villalobos and Tenderloin Merchants and Property
 3 Association, by and through their undersigned counsel, submit this Motion to Enforce
 4 Stipulated Injunction. Plaintiffs respectfully request that this Court order the City
 5 and County of San Francisco (“the City”) to resume full compliance with the
 6 Stipulated Injunction, including by making “all reasonable efforts” to bring the
 7 number of homeless encampments and tents in the Tenderloin neighborhood to zero.

8 **I. FACTUAL AND PROCEDURAL HISTORY**

9 In May 2020, Plaintiffs initiated a lawsuit in this Court against the City,
 10 alleging that unsanitary and unsafe conditions in the Tenderloin neighborhood,
 11 including the growing number of makeshift shelters and tents on the sidewalks,
 12 violated the civil rights of those who lived there, including residents, visitors,
 13 employees of local businesses and their patrons, persons with disabilities, and others
 14 who were deprived of the safe use and enjoyment of its sidewalks and streets. *See*
 15 Dkt. No. 1. In June 2020, the parties reached a settlement and entered a Stipulated
 16 Injunction. *See* Dkt. No. 71. As part of the Stipulated Injunction, the City agreed to:

- 17 • “[M]ake all reasonable efforts to achieve the shared goal of permanently
 reducing the number of tents, along with all other encamping materials
 and related personal property, [in the Tenderloin] to zero.”
- 18 • “[D]iscourage additional people from erecting tents in the neighborhood.”
- 19 • “[T]ake action to prevent re-encampment.”
- 20 • “[E]mploy enforcement measures for those who do not accept an offer of
 shelter or safe sleeping sites to prevent re-encampment.”

21 *Id.* at pp. 3-4. Upon dismissal of the action, the Court retained jurisdiction over the
 22 Stipulated Injunction. *See* Dkt. 99.

23 Far from making all reasonable efforts to reduce the number of tents and
 24 encampments to zero as required per the Stipulated Injunction, the City has lost
 25 ground. The City initially showed significant success, reducing the number of tents in
 26 the Tenderloin from 448 in May 2020 to 22 in October 2020. *See* Decl. of Rhiannon
 27

1 Bailard at ¶¶ 3–5. But the number of tents now sits at more than triple that figure.
 2 See *id.* at ¶ 7. A new count conducted at 11pm on February 14, 2024 found that there
 3 were 71 tents in the Tenderloin. *Id.*

4 Plaintiffs have engaged in extensive discussion with the City to address this
 5 backsliding, but these discussions have been fruitless. The City has failed to “make
 6 all reasonable efforts” to “reduce the number of tents” in the Tenderloin “to zero” or
 7 “to prevent re-encampment,” as required by the Stipulated Injunction. See Dkt. No.
 8 71 (Stipulated Injunction) at p. 3. For example, the City has access to approximately
 9 300 unused shelter spaces¹ but has failed to make all reasonable efforts to relocate
 10 occupants of tents to these alternative locations as required by the Stipulated
 11 Injunction. Thus, the City is in breach of its obligations under the Stipulated
 12 Injunction to make all reasonable efforts and take associated measures to achieve
 13 clear sidewalks in the Tenderloin. See page 1, *supra*.

14 Plaintiffs’ counsel met and conferred with counsel for the City on June 14,
 15 2023 and raised these failures on the part of the City. The parties then submitted
 16 their dispute to Magistrate Judge Cisneros, as required by the Stipulated Injunction
 17 See Dkt. No. 71 at p. 4. The parties attended settlement conferences before Judge
 18 Cisneros on September 20, October 2, and November 15, 2023, but were unable to
 19 negotiate a resolution. See Dkt. Nos. 110, 115, 122, 123, 124.

20 The City’s position is that it is barred from taking the enforcement measures
 21 required under the Stipulated Injunction by an order handed down by Chief
 22 Magistrate Judge Ryu in another matter, *Coalition on Homelessness, et al. vs. City*
 23 *and County of San Francisco, et al* on December 23, 2022 (“Judge Ryu’s Order”).
 24 Judge Ryu’s Order states:

25 Defendants are preliminary enjoined from enforcing or
 26 threatening to enforce, or using California Penal Code

27 ¹ See “Shelter and Crisis Interventions,” San Francisco Department of Homelessness and
 28 Supportive Housing, available at <https://hsh.sfgov.org/services/the-homelessness-response-system/shelter/#:~:text=Shelter%20guests%20who%20need%20to,moving%20to%20Shelter%20Overflow%20units>

1 section 148(a) to enforce or threaten to enforce, the following
 2 laws and ordinances to prohibit involuntarily homeless
 3 individuals from sitting, lying, or sleeping on public
 4 property:

- 5 • California Penal Code section 647(e)
 6 • California Penal Code section 370
 7 • California Penal Code section 372
 8 • San Francisco Police Code section 168
 9 • San Francisco Police Code section 169

10 This preliminary injunction shall remain effective as long as
 11 there are more homeless individuals in San Francisco than
 12 there are shelter beds available.

13 *Coal. on Homelessness v. City & Cnty. of San Francisco*, 647 F. Supp. 3d 806,
 14 842 (N.D. Cal. 2022), *aff'd in part, remanded in part*, No. 23-15087, 2024 WL 125340
 15 (9th Cir. Jan. 11, 2024), and *aff'd*, 90 F.4th 975 (9th Cir. 2024)

16 In support of her order, Judge Ryu cited two Ninth Circuit cases holding that
 17 cities are prohibited by the Eighth Amendment from punishing involuntary
 18 homelessness, *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) and *Johnson v.*
 19 *City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023). *Id.* at 832-833.

20 The City appealed Judge Ryu's Order to the Ninth Circuit Court of Appeals.
 21 On appeal, the City argued that to the extent an individual has refused available
 22 shelter, he or she is not involuntarily homeless and therefore *Boise* and *Grants Pass*
 23 do not apply. *Coal. on Homelessness v. City & Cnty. of San Francisco*, 90 F.4th 975,
 24 977 (9th Cir. 2024). On January 11, 2024, the panel unanimously issued a
 25 Memorandum limiting Judge Ryu's Order and holding, *inter alia*, that "a person who
 26 has refused a specific offer of available shelter is not involuntarily homeless" and can
 27 be lawfully relocated by the City. *Coal. on Homelessness v. City & Cnty. of San*
 28 *Francisco*, No. 23-15087, 2024 WL 125340, at *1 (9th Cir. Jan. 11, 2024). The panel
 remanded the case to the district court to reconsider the preliminary injunction in
 light of this holding. *Id.* at *2.

29 The City further argued in its appeal that enforcing the cited laws and
 30 ordinances would not "prohibit involuntarily homeless individuals from sitting, lying,

1 or sleeping on public property,” as Judge Ryu had held, because enforcement would
 2 only “require individuals to relocate from specific encampment sites and only at
 3 certain times.” *Coal. on Homelessness*, 90 F.4th at 977. For example, the City noted
 4 that homeless individuals removed from encampment sites could relocate to parks,
 5 beaches, or plazas. *Id.* at 980-981. In its separate Opinion, the court held that the
 6 City waived this argument by not raising it below. *Id.* at 977-98. Importantly, as
 7 Judge Bumatay emphasized in dissent to the holding in the Opinion, “the majority
 8 d[id] not endorse” the district court’s reasoning, but “simply conclude[d] that San
 9 Francisco’s arguments on appeal were waived.” *Id.* at 983 (Bumatay, J., dissenting).
 10 Thus, “the district court’s legal rulings are not the law of [the Ninth Circuit]” and
 11 “should be disregarded by other judges in this circuit.” *Id.*

12 The day after the panel issued its rulings in *Coalition on Homelessness*, the
 13 United States Supreme Court granted certiorari in *Grants Pass*. See *Grants Pass, OR*
 14 *v. Johnson*, No. 23-175, 2024 WL 133820 (U.S. Jan. 12, 2024). The Question
 15 Presented is: “Does the enforcement of generally applicable laws regulating camping
 16 on public property constitute ‘cruel and unusual punishment’ prohibited by the
 17 Eighth Amendment?” See *Grants Pass, OR v. Johnson*, Petition for a Writ of
 18 Certiorari, 2023 WL 5530379 (U.S.), *i.

19 The City filed an amicus brief in support of the petition for writ of certiorari in
 20 *Grants Pass*. See Brief for Amici Curiae City and County of San Francisco and Mayor
 21 Breed in Support of Petitioner, *Grants Pass, OR v. Johnson* (attached hereto as
 22 Exhibit “A”), at 4-5.² In its amicus brief, the City aptly described the deplorable
 23 conditions in San Francisco’s “poorest and most vulnerable neighborhoods,” a
 24 category that certainly includes the Tenderloin, and conceded that the City has
 25 chosen not to enforce its laws in response to this problem – which certainly falls short

27 2 Plaintiffs are filing a request for judicial notice of the City’s amicus brief together with this
 Motion. The City’s brief “is judicially noticeable because it is a court filing from another
 28 judicial proceeding.” *Wilson v. Frito-Lay N. Am., Inc.*, 260 F. Supp. 3d 1202, 1207 (N.D. Cal.
 2017).

1 of its “all reasonable efforts” commitment. *Id.* The City’s purported rationale for not
 2 doing more to reduce the number of tents and encampments is that Judge Ryu’s
 3 Order prevents it from doing so. *Id.* In the City’s words:

4 This judicial intervention [i.e., Judge Ryu’s Order] has led to
 5 painful results. The sad fact is that thousands of persons
 6 experiencing homelessness sleep on San Francisco streets in
 7 sleeping bags, tents, and makeshift structures. Many of
 8 them refuse offers of services and shelter. These
 9 encampments block sidewalks, prevent employees from
 10 cleaning public thoroughfares, and create health and safety
 11 risks. Local businesses, residents, and visitors also need to
 12 use these same public spaces, but frequently cannot. Often,
 13 encampments exist just outside of apartment buildings,
 schools, senior centers, and other community buildings,
 forcing families with children, persons with disabilities, and
 older community members to navigate them. Even worse,
 the City’s poorest and most vulnerable neighborhoods are
 often those wrestling hardest with the formidable challenges
 that encampments present. Without the ability to fully
 enforce its laws during the injunction, San Francisco has
 seen over half of its offers of shelter and services rejected by
 unhoused individuals. *Id.*

14 But contrary to the City’s assertions, nothing in Judge Ryu’s Order prevents
 15 the City from clearing tents and encampments once the occupants have “refused a
 16 specific offer of available shelter,” which the Ninth Circuit further clarified on appeal.
 17 *Coal. On Homelessness*, 2024 WL 125340, at *1 (Memorandum). Thus, Plaintiffs
 18 respectfully request that this Court order the City to resume full compliance with the
 19 Stipulated Injunction, including by making all reasonable efforts to reduce the
 20 number of tents and encampments in the Tenderloin to zero.

21 II. **LEGAL STANDARD**

22 “It is well settled that a district court has the equitable power to enforce
 23 summarily an agreement to settle a case pending before it.” *Callie v. Near*, 829 F.2d
 24 888, 890 (9th Cir. 1987). “An agreement must meet two requirements before it can
 25 be enforced. First, the agreement must be complete. Second, both parties must have
 26 agreed to the terms of the settlement.” *Ryan v. Editions Ltd. W., Inc.*, 2016 WL
 27 7826651, at *2 (N.D. Cal. Sept. 23, 2016). A federal court has authority to enforce a
 28 settlement after a case has been dismissed where, as here, it expressly retained

1 authority to enforce the settlement upon dismissal. *Kokkonen v. Guardian Life Ins.*
 2 *Co. of Am.*, 114 S. Ct. 1673 (1994). Likewise, where a party is subject to an injunction
 3 and the movant demonstrates *prima facie* evidence of non-compliance, the district
 4 court is empowered to enforce the injunction. *See Armstrong v. Brown*, 857 F. Supp.
 5 2d 919, 950-51 (N.D. Cal. 2012) (granting plaintiffs' motion to enforce injunction
 6 mandating defendants to provide prisoners with ADA-compliant accommodations).

7 III. ARGUMENT

8 A. Judge Ryu's Order Only Applies to Individuals who are 9 Involuntarily Homeless.

10 Judge Ryu's Order does not conflict with the Stipulated Injunction because it
 11 only applies to individuals who are *involuntarily* homeless. As the Ninth Circuit
 12 clarified on appeal, the Order does not apply to individuals who have "refused a
 13 specific offer of available shelter." *Coal. On Homelessness*, 2024 WL 125340, at *1
 14 (Memorandum); *accord Boise*, 920 F.3d 617 (holding that anti-camping laws can still
 15 be enforced against "individuals who *do* have access to adequate temporary shelter,
 16 whether because they have the means to pay for it or because it is realistically
 17 available to them for free, but who choose not to use it."); *Grants Pass*, 50 F.4th at
 18 813 (holding that cities can enforce local ordinances to remove homeless individuals
 19 so long as there are "other place[s] in the City for [the homeless individuals] to go").

20 There are currently approximately 300 unused shelter spaces in San
 21 Francisco.³ The City is obligated to offer these shelter spaces to the occupants of the
 22 Tenderloin's homeless encampments pursuant to the Stipulated Injunction, which
 23 provides that the City will, *inter alia*, "make all reasonable efforts" to "permanently
 24 reduc[e] the number of tents" in the Tenderloin "to zero." *See* Dkt. No. 71 (Stipulated
 25 Injunction) at p. 3. Homeless individuals who refuse these shelter spaces would not
 26 qualify as involuntarily homeless, and thus, Judge Ryu's Order would not bar the

27
 28 ³ See note 1, *supra*.

1 City from clearing the encampments.

2 Alternatively, as the City itself argued on appeal in *Coalition on Homelessness*,
 3 homeless individuals who are removed from encampments on sidewalks are free to
 4 relocate to other locations such as beaches and plazas. Thus, even absent available
 5 shelter spaces, there are “other place[s] in the City for [homeless individuals] to go.”
 6 *Grants Pass*, 50 F.4th at 813. This is a second, independent reason why the Eighth
 7 Amendment and this circuit’s precedent do not prohibit the City from complying with
 8 the Stipulated Injunction. While the City waived this argument in *Coalition on*
 9 *Homelessness*, this Court is free to consider it here and to conclude that the City
 10 must comply with the Stipulated Injunction regardless of the availability of unused
 11 shelter spaces.

12 In sum, the City may enforce any laws regarding removal of tents, encamping
 13 materials, and related personal property in the Tenderloin without violating Judge
 14 Ryu’s Order or Ninth Circuit precedent—and the City is obligated to do so under the
 15 terms of the Stipulated Injunction.

16 **B. Judge Ryu Cannot Issue an Order that Negates the Stipulated
 17 Injunction.**

18 Judge Ryu did not purport in her Order to overrule or modify the Stipulated
 19 Injunction, and for the reasons discussed above, the Stipulated Injunction does not
 20 conflict with Judge Ryu’s Order. However, even if the City’s interpretation were
 21 correct and Judge Ryu’s Order did conflict with the Stipulated Injunction, this Court
 22 would not be bound by Judge Ryu’s Order. As Judge Bumatay noted in his dissent,
 23 Judge Ryu’s “legal rulings are not the law of our court and they should be
 24 disregarded by other judges in this circuit.” *Coal. on Homelessness*, 90 F.4th at 983
 25 (Bumatay, J., dissenting). Moreover, this Court issued the Stipulated Injunction
 26 prior to the issuance of Judge Ryu’s Order, and it is well-settled that one district
 27 judge (or magistrate judge) does not have the authority to countermand or negate the
 28 prior order of another district judge. *See, e.g., United States v. Feathers*, 2016 WL

1 7337518, at *9 (N.D. Cal. Dec. 19, 2016); *Green v. Citigroup, Inc.*, 68 F. App'x 934,
2 936 (10th Cir. 2003) (“It is axiomatic that one district court has no jurisdiction to
3 review the decision of another district court.”); *Pierce v. Obama*, 2014 WL 4959062, at
4 *2 (S.D. Cal. Aug. 20, 2014); *Dhalluin v. McKibben*, 682 F. Supp. 1096, 1097 (D. Nev.
5 1988) (“The structure of the federal courts does not allow one judge of a district court
6 to rule directly on the legality of another district judge's judicial acts or to deny
7 another district judge his or her lawful jurisdiction.”). Thus, to the extent the
8 Stipulated Injunction and Judge Ryu's Order conflict, the Court can and should
9 enforce the terms of the prior-in-time Stipulated Injunction.

10 **IV. CONCLUSION**

11 For the reasons discussed above, Plaintiffs respectfully request that this Court
12 grant Plaintiffs' Motion and order the City to resume full compliance with the
13 Stipulated Injunction, including by taking enforcement measures as needed.

14

15 Dated: March 14, 2024

WALKUP, MELODIA, KELLY & SCHOENBERGER

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CERTIFICATE OF SERVICE

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I, Matthew D. Davis, Esquire, hereby certify that I electronically filed the
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By: /S/ Matthew D. Davis

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Hastings v. City and County San Francisco
USDC-Northern California Case No. 4:20-cv-3033-JST

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 - PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE
 - [PROPOSED] ORDER

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19 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the
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24 I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct and that I am employed in the office of
26 a member of the bar of this Court at whose direction the service was made.

27 Executed on March 14, 2024, at San Francisco, California.

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Kirsten Benzien